

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M No.52048 of 2023

Date of decision : 05.12.2023

Rahul Sharma

....Petitioner

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present :- Mr. Sunil Chadha, Sr. Advocate with
Mr. Akshay Chadha, Advocate,
Ms. Kashish Aggarwal, Advocate and
Mr. Raghav Chadha, Advocate for the petitioner.

Mr. J.S Arora, DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

1. This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.79 dated 03.05.2022 registered under Section 22 of the NDPS Act (Section 29 of NDPS Act was added lateron) at Police Station Khanna, District Ludhiana, Punjab.

3 On 15.11.2023, the following order was passed:-

“Ld. Senior Counsel representing the petitioner has drawn attention of this Court to the report received from Regional Testing Forensic Science Laboratory, Ludhiana placed on record as Annexure P-2 which shows that Parcel 'B' contained 180 white colored tablets in 18 strips (10 tablets in one strip) each labelled as Trakem-100. It is being contended by him that as per the prosecution the sample sent was of 200 tablets i.e. 20 strips (10 tablets in one strip) each. Reliance is being placed upon order passed by Sub-Divisional Magistrate, Samrala, dated 04.05.2022 under Section 52-A of the NDPS Act which reads as under :

“1. Today accused persons namely Rajan Sharma and Rahul Sharma produced before me being Ilaqa Magistrate along with case property being for it's certification under section 52-A of Narcotics & Psychotropic Substances Act.

2. The case property includes two bags containing TRAKEM-100 (Tramadol hydrochloride) containing quantity as under:- (a) First bag - 250 boxes each box containing 20 strips. Each strip of 10 tablets i.e. total 50,000 tablets (Tramadol). (b) Second bag - 200 boxes each containing 20 strips. Each strip of 10 tablets i.e, total 40,000 tablets (Tramadol)

The seals are intact and are sealed with seals bearing impressions "SS", "HS" and "GS". Sample seals are also produced. Bag containing

250 boxes i.e. total 50,000 tablets (tramadol) derived from Rajan Sharma and Bag containing 200 boxes i.e. total 40,000 tablets (tramadol) derived from Rahul Sharma.

3. The seals of two main parcels/bags were broken and followings samples are being drawn in the presence of the undersigned:-

(i) Sample derived from Rajan Sharma:-

(a) One box containing 20 strips containing 10 tablets each i.e. total 200 tablets (Tramadol), marked as A

(b) One box containing 20 strips containing 10 tablets each i.e. total 200 tablets (Tramadol), marked as A-1

(ii) Sample derived from Rahul Sharma:-

(a) One box containing 20 strips containing 10 tablets each i.e. total 200 tablets (Tramadol), marked as B

(b) One box containing 20 strips containing 10 tablets each i.e. total 200 tablets (Tramadol), marked as B-1

The samples were sealed accordingly and were put in four white cloth bags and sealed with the seal of the undersigned bearing impression "MD".

4. The remaining quantity in both main parcels comes to be as under:-

(a) First bag - 248 boxes each containing 20 strips. Each strip of 10 tablets i.e. total 49,600 tablets (Tramadol).

(b) Second bag - 198 boxes each containing 20 strips. Each strip of 10 tablets i.e. total 39,600,tablets (Tramadol).

and both the main parcels are again re-sealed with seal of the undersigned bearing impression "MD". The seals are checked and are intact.

5. The sample seal of the undersigned bearing impression "MD" was also prepared, attested and handed over to Inspector Surjit Singh No.160/FGS. Form No.29 was also prepared and handed over to Inspector Surjit Singh. No,160/FGS after seal of the Court bearing impression "MD" endorsed on it.

6. DIRECTIONS TO INVESTIGATING OFFICER:

(a) Samples A and B drawn today in the Court bearing impression "MD" are ordered to be sent to Regional Director, Forensic Science Laboratory, Ludhiana for it's chemical examination.

(b) Samples A-1 and B-1 drawn today in the Court bearing impression "MD" are ordered to be deposited in Judicial Malkhana.

7. Remaining case property be destroyed as per rules formulated under Circular Order No.9 dated 31.05.2001 of ADGP, Crime Punjab and Strictly by the Drug Disposal Committee, and after taking photographs of the same. Copy of this order be given to the Investigating Officer.

8. Inventory is, accordingly, certified to be correct and is per se admissible in evidence under section 52-A(4) of Narcotic Drugs and Psychotropic Substances Act, 1985. xxxx”

He thus submits that the case of the prosecution is bound to fall as tampering with the sample is evident from the record.

Faced with the situation State Counsel prays for time to file reply.

On his request, adjourned to 20.11.2023”.

3 Custody certificate as well as short reply by way affidavit of Gurmeet Singh, PPS, Deputy Superintendent of Police (CAW) Khanna, additional charge Sub Div. Samrala, Police District Khanna, District Ludhiana, have been filed in Court today. The same are taken on record.

4 In sum and substance, the factual assertion being made by counsel for the petitioner has been admitted in the same. It has been further claimed that effort was made to check whether the sample was drawn in the Court and whether two strips were left in the bulk parcel but the same could not be verified for the fact that bulk parcel was destroyed on 12.10.2022 and counsel for the State on inquiry from the Court admits that so far as destroyed contraband is concerned there is no record kept.

5 Learned counsel for the petitioner relies upon order passed by Apex Court in the case of ***Rabi Prakash Vs. The State of Odisha*** passed in ***Special Leave to Appeal (Crl.) No(s). 4169 of 2023*** decided on 13.07.2023 wherein it has been held as under :-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

6 Earlier to ***Rabi Prakash's case supra*** also Apex Court has consistently held that the prolonged incarceration has to be considered de hors bar contained under Section 37 of the NDPS Act. The Supreme Court in order dated 22.08.2022 passed by the Supreme Court in ***Special Leave to Appeal (Crl.) No.5530-2022*** titled as ***"Mohammad Salman Hanif Shaikh Vs. The State of Gujarat***, had held as under:-

"We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/ concerned Trial Court.

The special leave petition is, accordingly, disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of."

7 The above-said case was also a case under the NDPS Act, 1985 and the FIR had been registered under Sections 8(c), 21(c) and 29 of the said Act. The case of the prosecution therein was that the recovery from the said petitioner (therein) was of commercial quantity. The Supreme Court had observed that the concession of bail was granted to the petitioner (therein) only on the ground that he had spent about two years in custody and the conclusion of trial will take some time.

8 Supreme Court in order dated 07.02.2020 passed by the Hon'ble Supreme Court in ***Criminal Appeal No.245/2020 titled as "Chitta Biswas Alias Subhas Vs. The State of West Bengal"*** was pleased to grant concession of bail to the petitioner (therein) in a case where the custody was of 1 year and 7 months approximately. The relevant portion of the said order dated 07.02.2020 is as under: -

"Leave granted.

This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019.

The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in

support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:

(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial. With the aforesaid directions, the appeal stands allowed."

9 In order dated 05.08.2022 passed by the Supreme Court in ***Criminal Appeal No.1169 of 2022 titled as "Gopal Krishna Patra @ Gopalrusma Vs. Union of India,"*** the Supreme Court was pleased to observe as under: -

"Leave granted.

This appeal challenges the judgment and order dated 25.01.2022 passed by the High Court Of Madhya Pradesh, Principal Seat at Jabalpur, in MCRC No.117/2022. The appellant is in custody since 18.06.2020 in connection with crime registered as N.C.B. Crime No.02/2020 in respect of offences punishable under Sections 8, 20, 27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The application seeking relief of bail having been rejected, the instant appeal has been filed.

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned Additional Solicitor General for the respondent.

Considering the facts and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out.

We therefore, direct that:

(a) The appellant shall be produced before the Trial Court within five days from today.

(b) The Trial Court shall release the appellant on bail subject to such conditions as the Trial Court may deem appropriate to impose.

(c) The appellant shall not in any manner misuse his liberty.

(d) Any infraction shall entail in withdrawal of the benefit granted by this Order.

The appeal is allowed in aforesaid terms."

10 In order dated 01.08.2022 passed by the Supreme Court in Special Leave to Appeal (Crl.) No.5769/2022 titled as **"Nitish Adhikary @ Bapan Vs. The State of West Bengal"** Supreme Court has observed as under: -

"As per the office report dated 29.07.2022, copy of the show cause notice along with Special Leave Petition was supplied to the Standing Counsel for the State of West Bengal and separate notice has been served on the State also. However, no one has entered appearance on their behalf.

The petitioner seeks enlargement on bail in F.I.R. No. 612 of 2020 dated 17.10.2020 filed under Section 21(c) and 37 of the NDPS Act, registered at Police Station Bongaon, West Bengal.

During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.

Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner.

The petitioner is accordingly, directed to be released on bail subject to him furnishing bail bonds to the satisfaction of the Trial Court.

The Special Leave Petition is disposed of on the aforestated terms. Pending application(s), if any, shall stand disposed of."

11 Having heard rival contentions made by learned counsel for the parties, this Court is of the considered opinion that the petitioner has admittedly not a prior convict as yet.

12 Without further commenting upon the merits of the case, keeping in view that the petitioner is behind bar for more than one year, six months and nine days and has no criminal antecedents and taking note of the fact that out of 16 cited witnesses, only 3 have been examined till date, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial

Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.*
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.*
- (iii) The petitioner shall not absent himself on any date before the trial.*
- (iv) The petitioner shall not commit any offence while on bail.*
- (v) The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) The petitioner shall not in any manner try to delay the trial.*

13 In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

14 Ordered accordingly.

15 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

December 05, 2023

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(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable : No